

Appl. No. : 10/073,070  
Filed : February 7, 2002

### REMARKS

Claim 14 has been cancelled and Claims 45 and 46 were added. Claims 1 and 26 have been amended to more clearly claim the invention. Support for the amendments can be found in Claims 10 and 15 as originally filed, for Claim 1 and Claims 29 and 33 as originally filed, for Claim 26. Support for added Claims 45 and 46 can be found in the Specification page 6, paragraph 14.

Specific support for the language "without diene components" in Claims 1 and 26 can be found in Paragraph 14 of the Specification, where it is stated that "The EP(D)M used in the present invention may or may not contain a diene..." Claims 13 and 14 as filed (and corresponding Claim 32) show that this statement is to be generalized to other ethylene- $\alpha$ -olefin elastomers. Claim 13 lists examples with and without dienes, while Claim 14 is limited to examples with diene components. Thus, the specification clearly supports the recitation of ethylene- $\alpha$ -olefin elastomers without dienes.

The changes made to the Specification and Claims by the current amendment, including deletions and additions, are shown herein with ~~deletions~~ designated with a strikethrough and additions underlined. No new matter has been added herewith. As a result of the amendments, Claims 1, 3-13, 15-27 and 29-46 are presented for further examination.

### Rejection under 35 U.S.C. §103(a)

Claims 1, 3-27 and 29-44 were rejected under 35 U.S.C. §103(a) as being unpatentable in view of Schauder, U.S. patent 6,383, 439 ('439) in view of Schauder, U.S. patent 6,303,688 ('688) or Ilenda, U.S. patent 5,229,456 ('456). More specifically, the Examiner believed that Schauder ('439) taught all of the claim elements except "pelletizing the mixture". However, Schauder ('688) and Ilenda ('456) teach pelletizing rubber and polyolefin blends.

However, amended Claims 1 and 26 teach that the specific ethylene- $\alpha$ -olefin "has an ethylene content of from about 30 wt% to about 75 wt% without diene components". None of the cited references '688, '456, and '439 disclose or suggest any description of ethylene-higher- $\alpha$ -olefin resins containing 30 to 75 wt% ethylene without a diene component. Additionally, the cited references do not suggest that the pelletized mixture is dried.

The law is clear that three basic criteria must be met to establish a *prima facie* case of obviousness: (MPEP ¶2143):

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First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all of the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure (*In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1440 (Fed. Cir. 1991)).

Failure to establish any one of these three requirements precludes a finding of a *prima facie* case and, without more, entitles Applicant to allowance of the claims at issue. In this case, the prior art references alone or combined do not teach all of the claimed elements because they do not teach the use of ethylene-higher- $\alpha$ -olefin resins containing 30 to 75 wt% ethylene without a diene component. Additionally, the cited references do not suggest that the pelletized mixture is dried. Thus, Applicants respectfully request withdrawal of the rejection under 35 U.S.C. §103(a).

#### **Conclusion**

Should there be any remaining questions, the Examiner is respectfully requested to contact the undersigned at the telephone number appearing below.

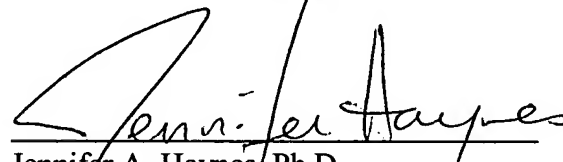
Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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Dated: Dec. 2, 2003

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